

Feb. 16. 2006 2:53PM

No. 5461. P. 1

**Marshall
& Melhorn**

Telephone No. (419) 249-7100 Fax No. (419) 249-7151
Four SeaGate, Eighth Floor, Toledo, Ohio 436

Fax Transmission

**RECEIVED
CENTRAL FAX CENTER**

FEB 16 2006

TO: U.S. Patent and Trademark Office

FAX #: 571 273 8300

FROM: D. Edward Dolgorukov

DATE: February 16, 2006

OPERATOR: Lisa Donbrosky

We are transmitting a total of 3 pages (including this cover sheet). If transmission is not complete, please call (419) 249-7164.

COMMENTS:

Please file the attached Response re: Application No. 09/314,052; filed May 18, 1999, for "Method and Apparatus for Conditioning Gas for Medical Procedures" (Attorney Docket No. 1-15372).

L2073-15372001

This message is intended for use only by the individual to whom it is addressed and may contain confidential and/or privileged information. If you are not the intended recipient, please take note that any dissemination, distribution or copying is not permitted. If you have received this communication in error, please destroy the original and notify us immediately by telephone so that we might prevent any recurrence. Thank you for your assistance.

No. 5461 P. 2

I hereby certify that this correspondence is being transmitted via facsimile to the general fax number at the United States Patent and Trademark Office, on February 16, 2006 by Lisa Donbrosky

Lisa Donbrasky
(Signature)

(Signature)

**RECEIVED
CENTRAL FAX CENTER
FEB 16 2006**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:
DOUGLAS E. OTT, et al.

Serial No. 09/314,052

Filed: May 18, 1999

For: METHOD AND APPARATUS
FOR CONDITIONING GAS FOR
MEDICAL PROCEDURES

Group Art Unit 3763

Examiner: Mendez, M.

Attorney Docket 1-15372

Paper No.

February 16, 2006

Mail Stop Amendment
Commissioner for Patents
P. O. Box 1450
Alexandria, VA 22213-1450

RESPONSE TO ELECTION/RESTRICTION REQUIREMENT

Honorable Sir:

This paper is in response to the restriction requirement dated February 9, 2006. In the restriction requirement, the Examiner stated that there were claims drawn to the following patentably distinct species of the claimed invention. They were listed as:

Figure 1 (gas apparatus with no temperature sensor); and

Figures 4 and 5 (gas apparatus with temperature sensor), respectively.

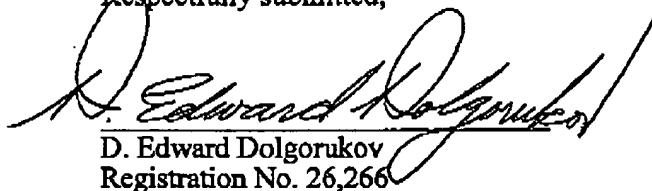
The Examiner stated that Applicant was required to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. The Examiner stated that no claim is currently considered generic.

Applicant traverses the requirement for at least the following reasons. First, these claims already exist in an issued patent (US Patent No. 6,976,489), therefore the United States Patent and Trademark Office has already found the claims to be generic.

Second, the presence of a temperature sensor in the species of Figs. 4 and 5, are just a subset, or a special case, of the species of Fig. 1. Claims which do not recite a temperature sensor also don't exclude the use of a temperature sensor. Therefore, Applicant also traverses because there would be significant overlap for the search for the inventions of each species, and there would be no hardship for each species to be searched and examined simultaneously.

Applicant provisionally elects the species of Figs. 4 and 5 (claims 83-86) with traverse. Applicant reserves the right to file a divisional application on the species of Fig.1 (claim 82).

Respectfully submitted,



D. Edward Dolgorukov
Registration No. 26,266

ATTORNEYS

MARSHALL & MELHORN, LLC
Four SeaGate, Eighth Floor
Toledo, Ohio 43604
(419) 249-7146
(419) 249-7151 Facsimile